



CITY OF EDMONDS

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HEARING EXAMINER

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BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Emily Terrell, Hearing Examiner Pro Tem

RE: Burnstead Construction Company Woodway Elementary Plat Re-Hearing P-2007-17, PRD-2007-18	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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INTRODUCTION

The Burnstead Construction Company is proposing to subdivide 5.61 acres and develop a 27-lot single family preliminary plat/Planned Residential Development (PRD) with four open space tracts and two joint use driveways serving two homes each. The City of Edmonds Comprehensive Plan designates the site as Single Family Urban 1 and the site is zoned RS-8 (Single Family Residential: 8,000 square feet minimum lot size).

The applicant received preliminary approval from the City of Edmonds in 2007 (*see* Exhibit 1, Attachments for 2007 numbers 2-4 and 12-15), which was subsequently appealed to Superior Court and again appealed to the Court of Appeals. The Appellate Court remanded the plat/PRD for further proceedings before the Hearing Examiner, limiting the proceedings before the Hearing Examiner to the issues concerning: 1) the drainage plan, 2) the perimeter buffer, and 3) open space while affirming the Applicant's burden on remand to demonstrate compliance with all applicable laws current at the time of vesting (Exhibit 1, Attachment 2012-1). The revised PRD and preliminary plat applications are **approved with conditions**.

ORAL TESTIMONY

Prior to the beginning of oral testimony, the Hearing Examiner provided a brief history of the project to date, described the scope and format of the limited re-hearing and disclosed the time, manner and circumstance of her visit to the site.

Staff Testimony:

Kernen Lien, Associate Planner at City of Edmonds, began his testimony by describing the notification requirements and procedures followed. Mr. Lien testified the City's review of the application was limited to the three remand issues. He noted the proposed changes to the plat are minor in nature. He stated the proposal had been changed to allow for the standard setbacks allowed in the RS-8 zone rather than the PRD standards recommended by the Architectural Design Board for all exterior lots. If the setbacks are allowed to be RS-8 standard setbacks, the perimeter buffer is not required (ECDC 20.35.050(C)). The lot dimensions and locations as well as the locations and dimensions of the proposed open space and road layouts were unchanged. Mr. Lien stated he felt the changes proposed by the Applicant are minor in nature and therefore there wasn't a need to have the Architectural Design Board review the modified application.

Mr. Lien stated the interior lots will retain the setbacks variances allowed by the Architectural Design Board. Mr. Lien noted the Conditions of Approval created by the initial Examiner in 2007 have been proposed for modification to accommodate the new setbacks (*see* Exhibit 1, Attachment 2007-1 sub-Attachment 6). Mr. Lien stated he felt all of the PRD ordinances had been met by the modified application.

As the Applicant had previously included the perimeter buffer in their open space calculations, removing the need for the perimeter buffer also eliminated the double counting issue. According to Mr. Lien, the 10% open space requirement was met with or without the perimeter buffer. Mr. Lien also noted in the prior hearing, the issue of critical areas was addressed. There are no critical areas on-site. None of the proposed open space is within a critical areas buffer. In response to a question from the Examiner, Mr. Lien described the definition of 'open space' within a PRD and said the City is satisfied that this condition is met.

Mr. Lien stated the Applicant had submitted a revised storm drainage report. He noted the prior report was remanded because of a misunderstanding of the significance of the infiltration rate by the prior Examiner and because of issues related to field infiltration testing. Mr. Lien stated the prior storm drainage plan had assumed an infiltration rate of 10 inches per hour. The current storm drainage plan assumes a more conservative infiltration rate of 2.3 inches per hour. Also, the Applicant conducted field infiltration tests at the location of the proposed stormwater facility. Mr. Lien stated the City was satisfied the new storm drainage plan provided a conservative approach and a feasible means of meeting the City's then-applicable storm water management requirements. He further noted the drainage design would undergo another technical review during the civil review stage prior to final plat approval. Final sizing of the stormwater vault will be determined at the civil review stage, as well.

In response to questioning by the Examiner, Jerry Shuster, Stormwater Engineering Program Manager for the City of Edmonds, stated the City did not have a standard acceptable infiltration rate for storm water in 2007 (based on the 1992 stormwater manual). He stated the facility size is based on the infiltration rate applicable to the specific site. He further stated the rate in the current drainage plan is a good rate. In response to questions from the Examiner related to flooding in the area, Mr. Shuster stated there is flooding in the area. He noted this area was recently annexed into the City from the County. This City has two or more capital improvement projects specifically planned to improve the storm drainage in this area. Mr. Shuster said the proposed project facility should allow for infiltration into the ground and will not be connected to the City's system. Mr. Shuster stated the private system will be maintained by the Homeowners' Association. He described the City's inspection and maintenance program for private stormwater facilities. Mr. Shuster stated that if the proposed system is designed, constructed and maintained properly, it will have no effect in terms of stormwater on adjacent properties. In response to a question from the Examiner, Mr. Shuster stated the storm design could change based on further civil design.

Jeanie McConnell, Engineering Program Manager for the City of Edmonds, described the City's civil review process. She noted at the preliminary plat phase, the City requires the Applicant to provide a preliminary stormwater design plan that shows the proposed development is feasible. The second phase is the review of civil construction plans with the final design of utility improvements. During the civil review, the City will ensure compliance with the storm water regulations and any conditions of approval applied to the plat, PRD or SEPA determination.

Mr. Lien stated the Applicant had adequately addressed all the remand items. The staff recommended approval with conditions. He stated the City recommended adoption of the prior conditions of approval from the Hearing Examiner in 2007 with some changes. He suggested condition #6 is no longer relevant. He also suggested the elimination of Condition #9 related to impervious coverage. He stated this condition was no longer applicable given the new storm drainage plan. Mr. Lien read the City's definition of 'coverage' with respect to structures versus all impervious surfaces. He stated he also altered Condition #15 to reflect the elimination of the perimeter buffer with the application of standards RS-8 setbacks. No other prior Conditions of Approval were proposed for alteration.

Applicants' Testimony:

The Applicant's Agent, Tiffany Brown, stated the Applicant fully supports the City's conclusions and recommendation for approval.

Public Testimony:

Mike Echellbarger stated he supported the project and felt the storm water issues would be adequately addressed.

Darlene Miller, Ira Shelton and Colin Southcote-Want each requested a postponement of the hearing because they felt there was inadequate notification and time to prepare for the hearing. Ms. Miller spoke in opposition of the project based on potential flooding and storm water management issues, a sub-standard perimeter buffer and insufficient open space. Mr. Shelton mentioned his concern about potential flooding and a potential encroachment on his property. Mr. Southcote-Want stated he felt the 2007 Hearing Examiner Condition of Approval #6 should not be stricken without mentioning the subsequent construction of Hickman Park.

Darlene Miller, Ira Shelton, Cliff Sanderlin, Kathie Ledger, Lora Petso, Corinne Beuchet, Colin Southcote-Want, Rob Michel, Alvin Rutledge, and Finnis Tupper spoke in opposition of the project because of stormwater issues. Mr. Sanderlin also expressed concern regarding fire access to the properties north of the subject. Ms. Beuchet stated she felt the proposed project provided no benefit to the community. She also expressed her concern about the impact on traffic, particularly with the sometimes overcrowded parking along the road when there are events at Hickman Park.

Lora Petso stated the Council had not been allowed to hear the appeal of the PRD. She also stated she was against changing Condition #9 from the prior Hearing Examiner's 2007 Conditions of Approval. She stated with the new proposed setbacks, the proposed house designs would not fit on the lots. She testified only three of the lots would support any of the proposed house plans, and they could only support the smallest proposed design. Ms. Petso stated she felt the revised application should be reviewed by the Architectural Design Board. She further stated she felt the Applicant should be required to file a new application if they cannot achieve PRD compliance.

Heather Marks, Colin Southcote-Want and Finnis Tupper testified there is a critical area on site in the form of a fish and wildlife conservation area. Ms. Marks testified the area is home to two threatened species, the banned tailed pigeon and the pileated woodpecker. She also stated her concern regarding a potential encroachment on her property.

Ron Steinman spoke in support of the project and stated he felt the City enforcement mechanisms would be sufficient to ensure stormwater is adequately managed.

Rebecca Wolfe stated she was testifying on behalf of Collette Piercy. Ms. Wolfe expressed her concern about flooding and the effect of the project on climate change. She expressed concerns about the adequacy of the proposed open space and the need for better environmental protection including tree preservation. Ms. Wolfe also stated her concern regarding traffic and parking in the area.

Eric Thuesen and Joe Schmaus spoke in favor of the project. Mr. Thuesen said the LUPA remand issues had been satisfied. Both Mr. Thuesen and Mr. Schmaus testified

drainage issues will see an overall improvement in the area with the new stormwater facilities constructed by the project.

Gary Humiston asked for clarification of the impervious surface calculations in the storm drainage plan. Kernen Lien read from the storm drainage plan.

Roger Hertrich, Colin Southcote-Want and Rob Michel questioned whether the new setbacks in the application meet with the Architectural Design Board's intent when they recommended approval of the project with conditions in 2007. They echoed Ms. Petso's concern that the houses planned for the site will not fit on the lots with the standard RS-8 setbacks and that they will not meet the single family design standards with respect to the width of the garages versus the overall width of the houses.

Colin Southcote-Want stated the open space parcels at the entrance to the site will not be usable. Mr. Southcote-Want also expressed his concern about traffic in the area.

Staff Rebuttal:

Kernen Lien rebutted the public testimony by noting the issues of critical areas and fish and wildlife habitat and conservation areas were resolved in 2007. He stated there are no critical areas on or adjacent off site and therefore there is no fish and wildlife habitat conservation area buffer. Mr. Lien also restated the City's position that no perimeter buffer is required as long as all lots adjacent to the perimeter of the site are built with standard RS-8 yard setbacks. He noted that had the Applicant chosen to build the site using the standard RS-8 development requirements, the site would have supported up to 30 lots of 8,000 square feet and 70 foot widths. Under the PRD application, the Applicant has proposed 27 lots of 5,700 to 8,300 square feet. The development also includes the required 10% open space.

Jeanie McConnell noted the removal of the 2007 Hearing Examiner's Condition of Approval #9 would allow for consistent application of the City's code based on the definition of impervious surface and structures. Jerry Shuster stated the Application will undergo a civil review prior to final plat approval and any deficiencies in the stormwater design will be addressed at that time.

Applicant's Rebuttal:

The Applicant's Stormwater Engineer, Rob Long, PE, from Blueline Engineering discussed the revised storm drainage plan. He noted the plan calls for infiltration of rooftop stormwater for each individual lot. He stated each lot would be evaluated for appropriate areas to place individual roof drain infiltration facilities. Overflow from these individual lot systems would be directed to the larger, project stormwater vault. He testified the revised storm management vault is 2.5 times larger than the initial design. He stated the system will account for all impervious surfaces including roofs, roads and sidewalks. Mr. Long testified the revised preliminary design is conservative and that the stormwater vault size could be reduced during the final design stage.

based on field conditions. Mr. Long stated the stormwater drainage plan for the project accounts for an additional 3.35 acres of upstream water flow. He testified the proposed project stormwater system should result in improvements in the overall flooding issues of the area. With respect to the use of the vested 1992 stormwater manual, Mr. Long stated the storm drainage plan includes hydrology modeling and guidance from the 1992 manual while employing newer technology and techniques from more recent stormwater manuals that were not available in 1992.

The Applicant's Attorney, David Johnston, noted the Hearing Examiner must give deference to the staff opinion under the rule of law. He also stated the Applicant had an absolute right to build the project in compliance with the applicable codes.

EXHIBITS

Exhibits admitted on the day of the hearing are described as Exhibits 1-8 below. Exhibits entered into the record during the open record period following the hearing from February 9th to February 23rd are described as Exhibits 9-22 below.

- Exhibit 1: Staff Report with Attachments 1-11, 2/2/12
- Exhibit 2a: Affidavit of Publication for Public Hearing Notice, 1/26/12
- Exhibit 2b: Adjacent Property Owners List, 1/5/12
- Exhibit 3: Parties of Record List
- Exhibit 4a-q: Public Comments received via email prior to the hearing, 2/8/12
 - 4a: Liz Smalley
 - 4b: Cliff Sanderlin and Heather Marks
 - 4c: Ira Shelton
 - 4d: Kathie Ledger
 - 4e: David Randles
 - 4f: Colin Southcote-Want
 - 4g: Ethel Moons
 - 4h: Jen Severson
 - 4i: Gary Humiston
 - 4j: Gary Humiston
 - 4k: Patricia Nicholoff
 - 4l: Carl and Susan Harrington
 - 4m: Sandy Sanders
 - 4n: Rebecca Wolfe
 - 4o: Joe Hillis
 - 4p: Ira Shelton
 - 4q: Kathie Ledger
 - 4r: Simone Studer
- Exhibit 5: Lora Petso, Statement with attachments, 2/9/12
- Exhibit 6: Ira Shelton, List of notification dates for neighbors, 2/9/12

- Exhibit 7: Email exchange between Lora Petso, Jeff Taraday, David Johnston, Kernen Lien, Rob Chave, Stephen Clifton, Phil Olbrechts and Tiffany Brown, 9/12/11 to 9/23/11
- Exhibit 8: Hearing Sign In Sheets, 2/9/12
- Exhibit 9: Cliff Sanderlin, Critical Areas Ordinance Map, 2/13/12
- Exhibit 10: Alvin Rutledge, Pre-Order Page 1, 2/13/12
- Exhibit 11: Kathie Ledger, Letter, 2/21/12
- Exhibit 12: Ira Shelton, Letter, 2/22/12
- Exhibit 13: Colin Southcote-Want, Letter, 2/22/12
- Exhibit 14: City of Edmonds, Memorandum, 2/22/12
- Exhibit 15: Constantinos and Sophie Tagios, Letter, 2/22/12
- Exhibit 16: Tracy Norlen, Email, 2/22/12
- Exhibit 17: Richard and Darlene Miller, Letter, 2/22/12
- Exhibit 18: Cliff Sanderlin, Letter, 2/22/12
- Exhibit 19: Roger Hertrich, Letter, 2/22/12
- Exhibit 20: Heather Marks, Letter, 2/22/12
- Exhibit 21: Dr. Rebecca Wolfe, Letter, 2/23/12
- Exhibit 22: Lora Petso, Statement with attachments, 2/22/12

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is the Burnstead Construction Company.
2. Hearing. The Hearing Examiner conducted an open record re-hearing pursuant to ECDC 20.06 on the revised application on February 9, 2012 at 3:00 p.m. at the City of Edmonds Public Safety Complex in the Council Chambers. At the request of several hearing participants, the Hearing Examiner left the record open from February 9th through February 23rd for additional public comment.
3. Scope. The Appellate Court decision (Court of Appeals Division 1, Decision #64496-3-1) remanded the matter for further proceedings before the Hearing Examiner "on the drainage plan, perimeter buffer, and open space matters." The Appellate Court noted while the current remand is limited to three specific issues; it is the Applicant's burden on remand to demonstrate compliance with all applicable laws current at the time of vesting.
4. Notification. On January 26, 2012, a notice of public hearing was published in the Everett Herald newspaper and posted at the subject site, as well as the Public Safety Building, City Hall, and the Edmonds Library. The notice was also mailed to property owners within 300 feet of the site, the Town of Woodway, and parties of record identified.

Substantive:

5. Site/Proposal Description. The Burnstead Construction Company is proposing to subdivide 5.61 acres and develop a 27-lot single family preliminary plat/Planned Residential Development (PRD) with four open space tracts and two joint use driveways serving two homes each. The City of Edmonds Comprehensive Plan designates the site as Single Family Urban 1 and the site is zoned RS-8 (Single Family Residential: 8,000 square foot minimum lot size). Under the RS-8 zoning, the lot could conceivably be developed with up to 30 residential lots. The open space tracts are Tracts A, C, E and F. Tracts A and F are 4,913 square feet and 3,566 square feet, respectively and are located at the entrance to the proposed subdivision. Tract E is 9,356 square feet and is located in the northeast corner of the site where the majority of the existing trees are growing. Tract C is 7,350 square feet and is located in the central area of the site. Tract C is also the location of the proposed stormwater vault. Tract C is the area set aside for the active recreation component of the proposed development. A BPA easement extends along the northern side of the site.

6. Characteristics of the Area. The zoning of the subject site and all properties surrounding the site is RS-8 (Single-family Residential). Hickman Park, a neighborhood park developed on the old Woodway Elementary School site, is adjacent to the east of the subject property. The properties to the north, south, east and west are developed with single family residences. Restlawn Memorial Cemetery is located to the southeast of the site across 237th Place SW. There are no critical areas on-site. There is a Fish and Wildlife Habitat Conservation area adjacent to the site.

7. Adverse Impacts. Members of the public testified about a range of potential adverse impacts including stormwater, traffic, parking, critical areas, open space, lot layout and housing design, placement of electrical wires, and buffering. Members of the public commented on several issues that are not relevant to the scope of this decision. Additionally, many of the issues raised have been dealt with either by the initial Hearing Examiner's Conditions of Approval (adopted herein as modified below) or the subsequent court decisions. This decision did not consider the issues of critical areas, the length of the proposed road, the potential encroachments, traffic or parking issues, or the undergrounding of electrical wires.

- a. Stormwater Impacts. Public testimony reflected concern that adjacent properties would suffer material damage from the plat/PRD in the form of potential stormwater impacts. A significant proportion of both the oral testimony and the public comment letters dealt with the propensity of this area to experience drainage issues and flooding¹. Expert testimony suggests potential stormwater and environmental impacts can be fully mitigated. In

¹ Darlene Miller, Ira Shelton, Cliff Sanderlin, Kathie Ledger, Lora Petso, Corinne Beuchet, Colin Southcote-Want, Rob Michel, Alvin Rutledge, Rebecca Wolfe and Finnis Tupper testimony and Exhibits 4f, 4g, 4m, 4o-r, 5, 11-13, 15-19, and 21-22.

addition to the 2007 Hearing Examiner Conditions of Approval, the project will be conditioned to meet strict impervious surface and stormwater facility maintenance requirements.

- b. Parking. Several members of the public expressed concern related to the inadequacy of parking at Hickman Park and the subsequent use of side streets, specifically 237th for overflow parking². The parking issues mentioned by many members of the public are related not to the subject itself but to Hickman Park's lack of adequate on-site parking. This is not an impact from the subject application and therefore, no mitigation for the park's parking issue is required from the Applicant. Additionally, this issue was considered at length in 2007 (Exhibit 1, Attachment 2007-2, Findings of Fact #44-48). The Applicant will be required to mitigate project related traffic impacts as required in the conditions of approval.
- c. Road Length. Lora Petso testified the proposed subdivision road is too long to end in a cul-de-sac without looping. Ms. Petso (Exhibits 5 and 22) notes the City's Transportation Plan prohibits cul-de-sac roads over 600 linear feet, though she does not provide a code reference. The street layout was considered in 2007 and addressed in the Hearing Examiner's Conclusions of Law #5 (Exhibit 1, Attachment 2007-2). The length of the proposed road was not contested in 2007 as part of the original hearing or the subsequent LUPA appeals. The proposed road dimensions and contours were not addressed during the original hearing or LUPA appeals and have not been altered since the original application. The issue is outside the scope of this decision.
- d. Property Encroachment. Several members of the public whose homes are located along the western boundary of the subject site expressed concern regarding potential encroachments because survey markers were placed within their backyards.³ A note on the face of the plat suggests several of the properties adjacent to the western portion of the subject encroach on the Applicant's property most likely due to landscaping and fencing that has been placed on the boundaries between properties over the years. Potential encroachment issues are outside the jurisdiction of the Hearing Examiner and are appropriately addressed in the civil court system.
- e. Critical Areas. Several people testified there are critical areas on and off-site in the form of Fish and Wildlife Habitat Conservation areas that have not been adequately addressed and buffered in the proposed site plan⁴. The Superior Court decision (Snohomish County Superior Court Memorandum Decision #07-2-08017-0) dealt extensively with the issue of Critical Areas and Fish and

² Corinne Beuchet, Ira Shelton, Kathie Ledger, Lora Petso and Colin Southcote-Want testimony and Exhibits 11-13 and 22.

³ Ira Shelton and Cliff Sanderlin testimony and Exhibits 15 and 18.

⁴ Heather Marks, Colin Southcote-Want and Finnis Tupper testimony and Exhibits 13, 18, 20, 21 and 22).

Wildlife Habitat Conservation Areas. The Superior Court found no fault with the City's treatment of either issue. The Appellate Court did not address critical areas. The issue of critical areas is outside the scope of this decision.

- f. Open Space. Members of the public also testified the project open space will not be usable under the definition of open space in the City's PRD code⁵. The project, as conditioned, will provide the required 10% of the gross lot area of open space and conform to the definition of "usable open space" (ECDC 20.35.030(D)).
- g. Electrical Wires. Ms. Petso (Exhibit 22) argued the electrical wires should be placed underground to protect views. The undergrounding of utility wires is already a requirement of ECDC 18.05 which will be addressed in the civil review phase prior to final plat approval and as required by the 2007 Hearing Examiner Condition of Approval #12 as adopted herein.
- h. Perimeter Buffer. Ms. Petso and others expressed⁶ concern about the buffering of views into perimeter properties given the smaller and denser nature of the proposed lots in comparison to existing development patterns. The project, pursuant to MDNS Condition #4 (Exhibit 1, Attachment 2007-1) will provide for additional landscaping where a property line is shared with another single family lot adjacent to the proposed PRD in compliance with ECDC 20.35.040.
- i. Setbacks. Ms. Petso and others⁷ testified the removal of the perimeter buffer constitutes a major change in the plat in that it necessitates a change in setbacks. The increased setbacks will result in changes to the developable areas to the lots and potential changes to the house designs. Ms. Petso requested a review of the revised 2012 plat by the Architectural Design Board. The Architectural Design Board's recommended Conditions of Approval (Bullet #2) requires review of the potential house designs against the Single Family Design Criteria at the time of building permit application review for compliance with ECDC 20.35.060.

8. There is nothing in the record to suggest that the City's civil and building permit review processes would not be able to fully mitigate all project specific impacts. There are no material adverse impacts discernible from the record. Additionally, the SEPA MDNS issued on April 19, 2007 appeals were denied. Subsequent decisions by the Superior and Appellate courts have upheld the SEPA decision. The Examiner concludes, as evidenced by the MDNS, there are no potential

⁵ Rebecca Wolfe and Colin Southcote-Want testimony and Exhibits 4p, 4q, 5, 12, 13, 17, 18, 21, and 22.

⁶ Roger Hertrich, Colin Southcote-Want and Rob Michel testimony and Exhibit 22.

⁷ *Ibid.*

adverse impacts resulting from the approval of the preliminary plat/PRD if the conditions of approval are implemented.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. ECDC 20.01.001 provides the Hearing Examiner with the authority to review and act upon preliminary formal plats and preliminary planned residential developments applications as Type III-B decisions in accordance with ECDC 20.01. The applicant received preliminary approval from the City of Edmonds in 2007⁸, which was subsequently appealed to Superior Court and again appealed to the Court of Appeals⁹. The Appellate Court remanded the plat/PRD for further proceedings before the Hearing Examiner. The plain language of the Appellate Court decision states, "We conclude that remand for further proceedings before the hearing examiner ... is appropriate." The City codes establish the Hearing Examiner's jurisdiction in this case as acknowledged in the Appellate Court decision and the Superior Court remand.

2. Scope. This decision is limited to the issues on remand by the Appellate Court¹⁰, specifically "on the drainage plan, perimeter buffer, and open space matters." The Appellate Court stated, "We conclude that the proper remedy under the circumstances of this case is to remand for further proceedings before the hearing examiner. Those proceedings should be limited to addressing the issues concerning the drainage plan, the perimeter buffer, and open space that we discuss in this opinion." The Court decision considers the Applicant's burden on remand to demonstrate compliance with all applicable laws current at the time of vesting, while emphasizing the limited nature of the review. The Appellate Court stated, "Pursuant to RCW 36.70C.140, we remand for further proceedings before the hearing examiner that are not inconsistent with this opinion."¹¹ As discussed above in Finding of Fact #7, issues related to critical areas, the length of the proposed road, the potential encroachments, traffic or parking issues, or the undergrounding of electrical wires are outside the scope of this decision. With the exception of the specific remand issues and those 2007 Conditions of Approval amended herein and noted below in the Conditions of Approval, the prior findings of fact, conclusions of law, and conditions of approval in the Hearing Examiner's 2007 decisions (Exhibit 1, Attachments 2007-2 and 2007-12 and 15) are considered valid and adopted herein.

3. Notification and Public Comment Period. The City has complied with the noticing provisions in ECDC 20.03 and ECDC 20.75.065.B (Exhibit 1, Attachment

⁸ Exhibit 1, Attachments 2007-2, 3, and 4, and 2007-12, 13, 14 and 15

⁹ Snohomish County Superior Court, Memorandum Decision #07-2-08017-0 and Exhibit 1, Attachments 2012-1

¹⁰ Court of Appeals Division 1, Decision #64496-3-1

¹¹ Ibid.

2012-11). Several hearing participants requested a postponement of the hearing citing a lack of prior knowledge of the project and insufficient review time (*see* Oral Testimony and Exhibit 4). The Examiner declined to postpone the hearing instead left the record open for an additional 14 days. Exhibits 9-22 are the public comments and the City's response received during the open record period after the date of the public hearing.

Substantive:

2. Comprehensive Plan and Zoning Designations. The Comprehensive Plan designates the site as "Single Family Urban 1". The area is zoned Single-Family Residential (RS-8).

3. SEPA Compliance. A Mitigated Determination of Nonsignificance (MDNS) was issued by the City of Edmonds on April 19, 2007 (Exhibit 1, Attachment 9 of Attachment 2007-1). The SEPA MDNS was subject to appeals which were denied by the City. A violation of WAC 197-11-055 was discussed in the Superior Court decision¹², however, the Court ruled the procedural issue in and of itself had no substantive effect in this case and was harmless. The SEPA decision was not specifically mentioned as one of the remand items from the Appellate Court. The substantive changes to the revised application were minor and consisted of an increase in the yard setbacks on lots adjacent to the perimeter of the development. The revised setbacks do not add any significant environmental impacts to the proposed development over those that were considered under the 2007 SEPA review. The April 19, 2007 MDNS is therefore retained in its entirety.

4. Vesting. This project is vested to the development codes in effect at the time of the complete application in 2007 under RCW 58.17.033(1):

A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.

However, in *Graham Neighborhood Association v. F.G Associates*, 162 Wn. App. 98 (2011) the Appellate Court found that not all regulations related to land use are land use control regulations. Land use control ordinances are those that exert a restraining or directing influence over land use. The practical effect of this decision is that land use review procedures do not vest. Therefore, within this decision procedural issues were reviewed based on the current review procedures while the substantive issues

¹² Snohomish County Superior Court, Memorandum Decision #07-2-08017-0

were reviewed based on the land use control ordinances in effect at the time of complete application in 2007.

5. Review Criteria and Application. The Applicants seek approval of a preliminary plat (vested to 2007 ECDC 20.75) and a Planned Residential Development (vested to 2007 ECDC 20.35). The application has been remanded by the Appellate Court on the basis of three issues: perimeter buffer, open space and drainage. Development regulations pertinent to the application also include stormwater management (vested to 2007 ECDC 18.35 and addressed as part of the preliminary plat approval criteria), critical areas (vested to 2007 ECDC 23.40) and single family residential restrictions (vested to 2007 ECDC 16.20). The issues of single family residential restrictions and critical areas were reviewed in 2007 as part of the original decision (Exhibit 1, Attachments 2007-1, 2007-2 and 2007-12). The scope of the Appellate Court remand did not include a re-review of compliance to then-current ECDC 16.20 or ECDC 23.40 beyond that necessitated by revisions to the original application. Neither of these issues was affected by the revised application. As noted in Conclusion of Law #2 above, those issues that are not specifically related to the Appellate Court's remand are outside the scope of this decision.

20.01.002(C) Decisionmaker(s).

Applications processed in accordance with subsection (B) of this section which have the same procedure number, but are assigned to different hearing bodies, shall be heard collectively by the highest decisionmaker; the city council being the highest body, followed by the hearing examiner, architectural design board or planning board, as applicable, and then the director. Joint public hearings with other agencies shall be processed according to ECDC 20.06.001. Concurrent public hearings held with the architectural design board and any other decisionmaker shall proceed with both decisionmakers present. [Ord. 3817 § 1, 2010; Ord. 3736 § 4 (Exh. A), 2009].

6. Both preliminary formal plat applications and preliminary planned residential development applications are processed as Type III-B permits (ECDC 20.01.003(A)). Decisions are rendered by both the Hearing Examiner and Architectural Design Board (ECDC 20.01.003(B)). ECDC 20.01.002(C) defines the Hearing Examiner as the highest decision making body when project review is assigned to different hearing bodies, as is the case in this decision.

20.01.002(B) Optional Consolidated Permit Processing.

An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or may be processed individually under each of the application procedures identified in ECDC 20.01.003. The applicant may determine whether the application will be processed collectively or individually. If the applications are processed individually, the highest numbered type procedure shall be

undertaken first, followed by the other procedures in sequence from the highest numbered to the lowest.

20.11.010 Review procedure – General design review.

A. Review. The architectural design board (ADB) shall review all proposed developments that require a threshold determination under the State Environmental Policy Act (SEPA). All other developments may be approved by staff as a Type I decision. When design review is required by the ADB, proposed development shall be processed as a Type III-B decision. The role of the ADB shall be dependent upon the nature of the application as follows:

2. The ADB shall review proposed developments at public meetings without a public hearing and make recommendations to the hearing examiner to approve, conditionally approve, or deny proposals for developments that, although consolidated as set forth in ECDC 20.01.002(B), are not subject to a public hearing by the ADB under subsection (A)(1) of this section. The hearing examiner shall subsequently hold a public hearing on the proposal.

3. The ADB under subsection (A)(1) of this section and the hearing examiner under subsection (A)(2) of this section shall approve, conditionally approve, or deny the proposal. The ADB or hearing examiner may continue its public hearing on the proposal to allow changes to the proposal, or to obtain information needed to properly review the proposal. See ECC 3.13.090 regarding exemptions from review required by this chapter.

7. Application review was consolidated pursuant to 20.01.002(B). The application was subject to a SEPA threshold determination (Conclusion of Law #3). The Architectural Design Board (ADB) reviewed the project at a public meeting on May 2, 2007. Consistent with ECDC 20.11.010(2), the ADB recommended approval of the project with conditions (Exhibit 1, page 8).

20.35.030 Alternative standards.

A. Alternative development standards may be established through the PRD process. Such alternative standards shall be limited to the bulk standards specifically set forth in this chapter. Absent specific authorization the standard may not be waived or varied through the PRD process.

1. Bulk development standards which may be established are as follows:

a. Building Setbacks. An applicant shall in every event comply with Uniform Building Code separation requirements for fire safety. See ECDC 20.35.040(B) for setback requirements.

b. Lot Size. Lot sizes may be reduced ("clustering") to allow dwelling units to be shifted to the most suitable locations on residential PRD sites so long as the overall density of the project complies with the comprehensive plan and zoning ordinance.

c. Lot width.

d. Lot coverage.

e. Street and Utility Standards Alternative. Street standards may be established by the city engineer and alter utility standards established by the public works director so long as such alternatives provide the same or greater utility to the public system, safety and long-term maintenance costs as the standards established by ECDC Title 18.

f. The enhanced design standards contained in this title.

2. No modification of height limits shall be permitted in the PRD process.

3. Since the PRD process does not authorize the division of land, housing types that require the division of land will require a short or long subdivision.

8. The original application requested several alternative development standards pursuant to ECDC 20.35.030(1)(a-c) (Exhibit 1, Attachment 2007-1). The 2007 Hearing Examiner Conditions of Approval specified alternative development standards for building setbacks, lot sizes, lot widths and lot coverage (Exhibit 1, Attachment 2007-2). Of these, the revised application has not affected the proposed alternative development standards with respect to lot sizes or lot widths. The Conditions of Approval for this decision retain the 2007 Hearing Examiner Conditions of Approval relating to lot sizes and lot widths. The City has proposed a change in the 2007 Hearing Examiner Condition of Approval #9 with respect to lot coverages. A discussion specifically related to lot coverages is found below in Conclusion of Law #14.

9. The revised application has resulted in a change to the proposed building setbacks. Due to the elimination of the perimeter buffer, the application has been revised to reflect alternative development standards for building setbacks for only the interior lots. The interior lots will retain the alternative building setbacks approved in the 2007 Hearing Examiner decision while the exterior lots will be built to reflect standard building setbacks in the RS-8 zone.

20.35.040 Criteria for establishing alternative development standards.

Approval of a request to establish an alternative development standard using a PRD differs from the variance procedure in that rather than being based upon a hardship or unusual circumstance related to a specific property, the approval of alternative development standards proposed by a PRD shall be based upon the criteria listed in this section. In evaluating a PRD which proposes to modify the development standards of the underlying zone, the city shall consider and base its findings upon the ability of the proposal to satisfy all of the following criteria, if applicable:

A. The proposed PRDs shall be compatible with surrounding properties in the following respects:

1. Provide landscaping for projects seeking to cluster lots under ECDC 20.35.030(A)(1)(b) through the design review process and greater buffering of buildings, parking and storage areas than would otherwise be provided through the subdivision process,

2. Providing safe and efficient site access, on-site circulation and off-street parking, and

3. Architectural design of buildings and harmonious use of materials as determined by the ADB in accordance with ECDC 20.35.060;

B. No setback from the exterior lot lines of the PRD may be reduced from that required by the underlying zoning unless a variance or subdivision modification is approved;

C. Minimize the visual impact of the planned development by reduced building volumes as compared with what is allowable under the current zoning or through landscape or other buffering techniques;

D. Preserve unique natural features or historic buildings or structures, if such exist on the site; and/or

E. Reduction of impervious surfaces through the use of on-site or common parking facilities rather than street parking. [Ord. 3465 § 1, 2003].

10. The revised application eliminates the perimeter buffer and alters the setbacks on the exterior lots to conform to the standard setbacks allowable in the RS-8 zone to comply with the design criteria in ECDC 20.35.050. No other substantive changes are proposed beyond the resizing of the stormwater vault. The stormwater vault is underground and does not affect the visual character of the PRD. The two alternative development standard establishment criteria impacted by the revised

application are the provision of a perimeter buffer (ECDC 20.35.040(A)(1)) and the exterior setbacks (ECDC 20.35.040(B)). The revised application has removed any request for a reduction in the setbacks from exterior lot lines. As noted in the Staff Report (Exhibit 1, page 6), pursuant to MDNS Condition #4 (Exhibit 1, Attachment 9 of Attachment 2007-1) additional landscaping will be provided along the exterior perimeter of the PRD to act as visual buffering. All other alternative development standard establishment criteria are met in the 2007 Hearing Examiner Conditions of Approval (Exhibit 1, Attachment 2007-2) as adopted herein and amended where noted below.

20.35.050 Decision criteria for PRDs.

Because PRDs provide incentives to applicants by allowing for flexibility from the bulk zoning requirements, a clear benefit should be realized by the public. To ensure that there will be a benefit to the public, a PRD which seeks alternative bulk standards shall be approved, or approved with conditions, only if the proposal meets the following criteria:

C. Perimeter Design. The design of the perimeter buffer shall either:

- 1. Comply with the bulk zoning criteria applicable to zone by providing the same front, side and rear yard setbacks for all lots adjacent to the perimeter of the development; and/or*
- 2. Provide a landscape buffer, open space or passive use recreational area of a depth from the exterior property line at least equal to the depth of the rear yard setback applicable to the zone. If such a buffer is provided, interior setbacks may be flexible and determined pursuant to ECDC 20.35.030. When the exterior property line abuts a public way, a buffer at least equal to the depth of the front yard requirement for the underlying zone shall be provided.*

D. Open Space and Recreation. Usable open space and recreation facilities shall be provided and effectively integrated into the overall development of a PRD and surrounding uses and consistent with ECDC 20.35.060(B)(6). "Usable open space" means common space developed and perpetually maintained at the cost of the development. At least 10 percent of the gross lot area and not less than 500 square feet, whichever is greater, shall be set aside as a part of every PRD with five or more lots. Examples of usable open space include playgrounds, tot lots, garden space, passive recreational sites such as viewing platforms, patios or outdoor cooking and dining areas. Required landscape buffers and critical areas except for trails which comply with the critical areas ordinance shall not be counted toward satisfaction of the usable open space requirement. [Ord. 3465 § 1, 2003].

11. As in Conclusion of Law #10, a limited number of the PRD decision criteria are affected by the revision of the original application. The revised application eliminates the perimeter buffer. In doing so, the Applicant altered the setbacks on the exterior lots to conform to the standard setbacks allowable in the RS-8 zone. The project now complies with ECDC 20.35.050(C). In the original application, the Applicant overlapped the perimeter buffer with the required open space. Both the Superior Court and the Appellate Court pointed to the plain language of the code that prohibited the inclusion of a required landscape buffers from the open space total. The lot layout has not been altered since 2007 with the exception of removing the perimeter buffer and altering the exterior lot setbacks to meet the standard setbacks in the RS-8 zone. The resulting four open space tracts, without the landscape buffer, are sufficient to meet the 10% open space requirement.

12. Colin Southcote-Want stated the open space parcels at the entrance to the site will not be usable. The project will be conditioned to demonstrate compliance with the definition of “usable open space” in ECDC 20.35.050(D). All other PRD decision criteria are met in the 2007 Hearing Examiner Conditions of Approval (Exhibit 1, Attachment 2007-2) as adopted herein, amended where noted below or conditioned as part of this decision.

20.35.060 Single-family design criteria.

Because PRDs may utilize alternative bulk development standards in residential zones, the following single-family design criteria are established to ensure that development of PRDs in single-family zones will maintain a single-family character. Although the criteria listed here are not necessarily consistent with every design characteristic of every single-family neighborhood in the city of Edmonds, the criteria have been developed to create a reasonable single-family residential setting. The intent behind these criteria is to ensure a high quality of design and construction for all buildings located in single-family neighborhoods where development standards may be modified through the PRD process.

13. As noted above in Finding of Fact #7i, Ms. Petso and others testified the removal of the perimeter buffer constitutes a major change in the plat in that it necessitates a change in setbacks. The increased setbacks will result in changes to the developable areas to the lots and potential changes to the house designs. City Staff testified the changes proposed by the Applicant are minor in nature and therefore there wasn't a need to have the Architectural Design Board review the modified application. Ms. Petso requested a review of the revised 2012 plat by the Architectural Design Board (ADB). By noting only three of the revised lots could support the house designs approved by the ADB; Ms. Petso asserted the ADB had approved a specific and fixed set of house designs. The minutes of the Architectural Design Board meeting reflect Tiffany Brown, “noted the attachment of exhibits that

were put forward of homes to give the board an idea of what they were thinking¹³. It is clear from the record the building designs were meant to be conceptual in nature and are not binding to the final design. The Architectural Design Board's recommended Conditions of Approval state, "A variety of materials or building forms must be used on all sides of the homes"¹⁴, indicating the home designs presented by the Applicant were conceptual in nature and would be refined at a later date. The ADB also recommended review of the potential house designs for compliance with the Single Family Design Criteria (ECDC 20.35.060) at the time of building permit application review¹⁵. This condition will be met by prescription prior to issuance of building permits.

14. Another issue voiced during the public testimony and in Exhibit 22 relates to an altered front yard setback. The alternative development standard establishment criteria (ECDC 20.35.050(A)(3)) requires architectural design of buildings and harmonious use of materials as determined by the ADB in accordance with ECDC 20.35.060. The ADB supported "the inclusion of a secondary street setback for non-habitable portions of the building to allow porches and other entryway type features to project within 15 feet of the street property lines¹⁶" while holding the habitable portion of the structure to the standard RS-8 front yard setback¹⁷. ECDC 20.35.050(C)(1) requires structures to, "comply with the bulk zoning criteria applicable to [the] zone by providing the same front, side and rear yard setbacks for all lots adjacent to the perimeter of the development." The site development exceptions (ECDC 16.20.040(C)) do not allow structures more than 30 inches above the ground to project into the required setback. The Examiner recognizes the ADB's intent, but the plain language of the code prohibits the alteration of the front yard setback on exterior lots when there is no perimeter buffer (ECDC 20.35.050(C)(1)).

20.75.080 General findings.

A proposed subdivision may be approved only if all of the following general findings can be made for the proposal, as approved or as conditionally approved:

A. Subdivision Ordinance. The proposal is consistent with the purposes of this chapter (as listed in ECDC 20.75.020) and meets all requirements of this chapter.

B. Comprehensive Plan. The proposal is consistent with the provisions of the Edmonds Comprehensive Plan, or other adopted city policy, and is in the public interest.

¹³ Exhibit 1, Attachment 11 of Attachment 2007-1, page 10, last paragraph

¹⁴ Exhibit 1, Page 8, #4 Single Family Design Standards, Bullet #1

¹⁵ Exhibit 1, Page 8, #4 Single Family Design Standards, Bullet #2

¹⁶ Exhibit 1, Page 8, #4 Single Family Design Standards, Bullet #4

¹⁷ Exhibit 1, Attachment 11 of Attachment 2007-1, page 11, third paragraph

C. Zoning Ordinance. The proposal meets all requirements of the zoning ordinance, or a modification has been approved as provided for in this chapter.

D. Flood Plain Management. The proposal meets all requirements of the Edmonds Community Development Code relating to flood plain management. [Ord. 2466, 1984].

15. Each of these criteria was addressed in the 2007 Hearing Examiner decision (Exhibit 1, Attachment 2007-2). None of the revisions to the application impact the General Findings for subdivision approval. The criteria are met.

20.75.085 Review criteria.

The following criteria shall be used to review proposed subdivisions:

D. Improvements.

1. Improvements which may be required, but are not limited to, streets, curbs, pedestrian walks and bicycle paths, sidewalks, street landscaping, water lines, sewage systems, drainage systems and underground utilities.

2. The person or body approving a subdivision shall determine the improvements necessary to meet the purposes and requirements of this chapter, and the requirements of:

a. ECDC Title 18, Public Works Requirements;

b. Chapter 19.75, Fire Code, as to fire hydrants, water supply and access.

This determination shall be based on the recommendations of the community development director, the public works director, and the fire chief.

16. A limited number of the preliminary plat decision criteria are affected by the revision of the original application. The most significant revision deals with stormwater. Ten members of the public testified in opposition of the project because of stormwater issues and the potential for flooding. City Staff testified the City is satisfied the new storm drainage plan provides a conservative approach and a feasible means of meeting the City's then-applicable storm water management requirements. The Applicant has demonstrated through expert testimony that stormwater impacts may be fully mitigated in accordance with the *Stormwater Management Manual for the Puget Sound Basin*, Department of Ecology (1992). Project opponents provided no expert testimony with respect to the storm drainage plan. Additionally, the drainage design will undergo another technical review during the civil review stage

prior to final plat approval. Final sizing of the stormwater vault will be determined at the civil review stage, as well.

17. Lora Petso (Exhibit 22) testified against the storm drainage plan because the City and Applicant “erred in not conforming to the 1992 [stormwater] manual,” and “vesting to the 1992 Storm drainage manual vests to all provisions of the manual, including those related to closed depression analysis, testing methods, and the location and design of roof infiltration facilities.” Ms. Petso asserted the issue of using 2005 King County Surface Water Design Manual methodologies within a set of design calculations and location parameters for stormwater systems vested to the 1992 Ecology code is dispositive. Ms. Petso cites *East County Reclamation v. Bjornsen* (105 P.3d 94 (2005)). In that case, the Court of Appeals found,

“the vested rights doctrine does not allow a developer to file an application for an impermissible use and then to selectively waive its vested rights so it can benefit from parts of newly-enacted regulations allowing the use without having to comply with other parts of those same new regulations.”

The application for a preliminary plat and planned residential development are not impermissible uses and the Applicant has not attempted to selectively waive its vested rights to benefit from new regulations that would not have otherwise allowed the proposed use.

18. The City testified (Exhibit 21),

“In the preliminary drainage design, the applicant chose to use a methodology in the 2005 King County Surface Water Design Manual to develop a design infiltration rate. The use of this manual for this purpose is acceptable because the more recent manual has incorporated lessons-learned from approximately 13 years of experience on designing and operating infiltration systems compared to the 1992 Ecology manual. It also provides a more conservative approach than the 1992 Ecology manual.”[Emphasis added.]

The City has developed a “roadmap” for the applicant to follow during final design of the infiltration system which includes using the 2005 King County Surface Water Design Manual (2005 KCSWDM) to determine the design infiltration rate for the proposed infiltration facility. The City proposes the Applicant determine the design infiltration rate using the methodologies from Section 5.4.1 of the 2005 KCSWDM for Soils, Measured Infiltration Rates, Design Infiltration Rates and Performance Testing sections. The City then proposes the Applicant substitute this design infiltration rate for the “ f_d ” value in the design infiltration best management practices found in Volume II, Chapter III-3 of the 1992 Ecology manual. All other applicable portions of the 1992 Ecology manual will remain in effect.

19. The project is vested to the design, implementation and maintenance best management practices of the 1992 Ecology stormwater manual (ECDC 18.30.020).

The storm drainage plan was significantly revised from 2007 to reflect a more conservative storm water infiltration rate and changes to infiltration testing locations and methodologies. The City testified they are satisfied the Applicant's preliminary stormwater design is adequate to meet ECDC 18.30 and the vested 1992 Ecology stormwater manual. No opposing expert testimony was offered. As conditioned, the stormwater impacts will be mitigated and the requirements of ECDC 18.30 will be satisfied. All other preliminary plat decision criteria are met in the 2007 Hearing Examiner Conditions of Approval (Exhibit 1, Attachment 2007-2) as adopted herein, amended where noted herein or conditioned as part of this decision.

20. Modifications to 2007 Conditions of Approval. City staff requested several modifications to the 2007 Hearing Examiner Conditions of Approval (Exhibit 1, pages 11-13). Changes to 2007 Condition 15.b.ii-iii and 18 reflect the requirement for standard RS-8 zone yard setbacks to accommodate the elimination of the perimeter buffer in compliance with ECDC 20.35.050.(C)(1). Condition #2 has been amended to reflect a new exhibit reference since 2007. Condition #6 has been eliminated because it referred to the demolition of a structure that has since been removed. Each of the above requested amendments to the 2007 Hearing Examiner Conditions of Approval is granted as reflected in the Conditions of Approval below.

21. In addition to the requested changes to the 2007 Hearing Examiner Conditions of Approval above, City Staff requested the elimination of Condition #9 related to impervious lot coverage. The 2007 Hearing Examiner Condition of Approval #9 stated,

"No individual lot shall exceed 35 percent impervious lot coverage. Impervious coverage includes the residence's footprint, driveways, patios and sidewalks,"

Staff testified the elimination of 2007 Condition #9 would remove a discrepancy between the City code definitions of impervious surfaces and structures (ECDC 18.30.010, ECDC 21.15.110 and ECDC 21.90.150) and the application of those definitions as applied by the Hearing Examiner in the 2007 Conditions of Approval.

18.30.010 Impervious Surface.

"Impervious surface" means a constructed hard surface that either prevents or retards the entry of water into the soil. Impervious surfaces include, but are not limited to, roof tops, patios, storage areas, concrete, asphalt, brick, gravel, oiled, packed earthen or other surfaces that similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces.

21.15.110 Coverage.

Coverage means the total ground coverage of all buildings or structures on a site measured from the outside of external walls or supporting members or from a point two and one-half feet in from the outside edge of a cantilevered roof, whichever covers the greatest area.

21.90.150 Structure.

Structure means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences less than six feet in height, retaining walls, rockeries, and similar improvements of a minor character less than three feet in height.

ECDC 20.35.030(1)(e) explicitly allows the alteration of improvement standards in the creation of a PRD. The City's argument with respect to this discrepancy in the application of terms is similarly not compelling given the greater specificity of the term 'impervious surface' in the most applicable code, the City's stormwater regulations (ECDC 18.30).

22. The Staff testified 2007 Condition #9 was no longer necessary given the new storm drainage plan which limits impervious surface to 3,000 square feet. The proposed storm drainage plan would permit impervious surfaces ranging from 35.9% to 52.6%, from the largest to the smallest lot. While the revised storm drainage plan would allow the majority of the land on the smaller lots to be covered with impervious surfaces, the setback requirements limit the smallest lot to a maximum of 2,475 square feet in structures. The 2007 Hearing Examiner Decision does not state whether the basis for Condition #9 was with respect to stormwater or aesthetic concerns. The revised Condition of Approval #2 (below) suggested by the City Staff does appear to remedy the loss of 2007 Condition of Approval #9 in that the new condition reflects the design parameters of the revised stormwater drainage plan while still enforcing the bulk standards for structures as required by 2007 Condition of Approval 15.b.iv. The Examiner defers to the Staff's opinion with respect to the intent and effect of the 2007 Condition #9 and the adequacy of proposed Condition of Approval #2 herein. The request for the elimination of 2007 Condition #9 is granted.

DECISION

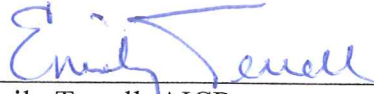
All preliminary plat and Planned Residential Development criteria are met. The preliminary plat/PRD is approved with the following conditions:

1. This project is subject to all prior conditions of approval as outlined in the Staff Report (Exhibit 1, Page 11-14) including the May 2, 2007 recommendations of the Architectural Design Board (Exhibit 1, Page 8) and the April 19, 2007 SEPA MDNS (Exhibit 1, Attachment 9 of Attachment 2007-1), except as amended herein.
2. No individual lot or tract shall exceed 3,000 square feet of impervious surface area. "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as it occurs under natural conditions prior to development, resulting in storm water runoff from the surface in greater

quantities or at an increased rate of flow compared to storm water runoff characteristics under natural conditions prior to development. Common impervious surfaces include (but are not limited to) rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces that similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. However, open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Outdoor swimming pools shall be considered impervious surfaces in all situations.

3. The final storm drainage design must account for 100% of impervious surfaces within the public way including the road surface, sidewalks, curb and gutter.
4. The recording documents shall include access easements on Tract C (as identified in Exhibit 1, Attachment 2012-3) and/or all final locations of storm drainage facilities to the City of Edmonds for the purpose of accessing and inspecting the storm drainage facility or facilities. The City shall use enforcement actions as appropriate to ensure all necessary maintenance is completed in a timely fashion.
5. The recording documents shall reflect the responsibility for the long term maintenance of all storm water and open space facilities rests with the Homeowners' Association and that each lot owner within the plat is jointly and severally liable.
6. Prior to final plat approval, the Applicant shall submit plans for each open space tract (Tracts A, C, E and F) demonstrating compliance with the definition of "usable open space" in ECDC 20.35.050(D).
7. The recording documents must include a table listing the front, rear and side setbacks for all lots.
8. Prior to final plat approval, the Applicant shall demonstrate compliance with all stormwater best management practices requirements pursuant to the *Stormwater Management Manual for the Puget Sound Basin*, Department of Ecology (1992), including the ultimate value for the design infiltration rate, even if more recent methodologies are employed to determine the design parameters of the stormwater facility.

Dated this 7th day of March, 2012.



Emily Terrell, AICP
Edmonds Hearing Examiner Pro Tem

Appeal Right and Valuation Notices

This decision is final and subject to appeal to the City Council by closed record review as governed by ECDC 20.01.003(B). Appeal deadlines are short (14 days from issuance of the decision) and the courts strictly apply the procedural requirements for filing an appeal.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.